

above those covered by any site-specific bond, and the person has not complied with the reimbursement requirement and paid any associated penalties.

*Violation, failure or refusal*, for purposes of parts 724 and 846 of this chapter, means—

(1) A failure to comply with a condition of a Federally-issued permit or of any other permit that OSM is directly enforcing under section 502 or 521 of the Act or the regulations implementing those sections; or

(2) A failure or refusal to comply with any order issued under section 521 of the Act, or any order incorporated in a final decision issued by the Secretary under the Act, except an order incorporated in a decision issued under section 518(b) or section 703 of the Act.

*Violation notice* means any written notification from a regulatory authority or other governmental entity, as specified in the definition of *violation* in this section.

*Water table* means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

*Willful or willfully* means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted—

(1) Intentionally, voluntarily, or consciously; and

(2) With intentional disregard or plain indifference to legal requirements.

[44 FR 15316, Mar. 13, 1979]

EDITORIAL NOTE: For Federal Register citations affecting § 701.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

EFFECTIVE DATE NOTE: In § 701.5, the definition of *Affected area*, insofar as it excludes roads which are included in the definition of *Surface coal mining operations*, was suspended at 51 FR 41960, Nov. 20, 1986.

#### § 701.11 Applicability.

(a) Any person who conducts surface coal mining operations on non-Indian or non-Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit

issued pursuant to the applicable State or Federal program. However, under conditions specified in 30 CFR 773.4(b) of this chapter, a person may continue operations under a previously issued permit after 8 months from the date of approval of a State program or implementation of a Federal program.

(b) Any person who conducts surface coal mining operations on Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program for the State in which the Federal lands are located shall have a permit issued pursuant to part 740 of this chapter. However, under conditions specified in § 740.13(a)(3) of this chapter, a person may continue such operations under a mining plan previously approved pursuant to 43 CFR part 3480 or a permit issued by the State under the interim State program after 8 months after the date of approval of a State program or implementation of a Federal program.

(c) Any person who conducts surface coal mining operations on Indian lands on or after eight months from the effective date of the Federal program for Indian lands shall have a permit issued pursuant to part 750 of this chapter. However, a person who is authorized to conduct surface coal mining operations may continue to conduct those operations beyond eight months from the effective date of the Federal program for Indian lands if the following conditions are met:

(1) An application for a permit to conduct those operations has been made to the Director within two months after the effective date of the Federal program for Indian lands and the initial administrative decision on that application has not been issued; and

(2) Those operations are conducted in compliance with all terms and conditions of the existing authorization to mine, the requirements of the Act, 25 CFR part 216, and the requirements of all applicable mineral agreements, leases or licenses.

(d) The requirements of subchapter K of this chapter shall be effective and shall apply to each surface coal mining and reclamation operation for which

the surface coal mining operation is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in paragraph (e) of this section.

(e)(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of subchapter K of this chapter, except that—

(i) An existing structure which meets the performance standards of subchapter K of this chapter but does not meet the design requirements of subchapter K of this chapter may be exempted from meeting those design requirements by the regulatory authority. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(ii) If the performance standard of subchapter B of this chapter is at least as stringent as the comparable performance standard of subchapter K of this chapter, an existing structure which meets the performance standards of subchapter B of this chapter may be exempted by the regulatory authority from meeting the design requirements of subchapter K of this chapter. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(iii) An existing structure which meets a performance standard of subchapter B of this chapter which is less stringent than the comparable performance standards of subchapter K of this chapter or which does not meet a performance standard of subchapter K of this chapter, for which there was no equivalent performance standards in subchapter B of this chapter, shall be modified or reconstructed to meet the performance and design standard of subchapter K of this chapter pursuant to a compliance plan approved by the regulatory authority only as part of the permit application as required in 30

CFR 780.12 or 784.12 and according to the findings required by 30 CFR 773.15;

(iv) An existing structure which does not meet the performance standards of subchapter B of this chapter and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the performance and design standards of subchapter K prior to issuance of the permit.

(2) The exemptions provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section shall not apply to—

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.

(f)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the date on which a State program is approved or a Federal program implemented, shall either file a notice of intention to explore or obtain approval of the regulatory authority, as required by 30 CFR part 772.

(2) Coal exploration performance standards in 30 CFR part 815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface 2 months after approval of a State program or implementation of a Federal program.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[44 FR 15316, Mar. 13, 1979, as amended at 44 FR 77446, Dec. 31, 1979; 48 FR 6935, Feb. 16, 1983; 48 FR 44391, Sept. 28, 1983; 48 FR 44779, Sept. 30, 1983; 49 FR 38477, Sept. 28, 1984; 54 FR 13822, Apr. 5, 1989; 65 FR 79663, Dec. 19, 2000]

EFFECTIVE DATE NOTE: A document published at 44 FR 67942, Nov. 27, 1979, temporarily suspended § 701.11(d) (1) and (2), which were redesignated as paragraphs (e) (1) and (2) at 49 FR 38477, Sept. 28, 1984, insofar as it may be read to retain discretion in the regulatory authority to grant an exemption from reconstruction of existing structures after making the findings in 30 CFR 773.15.